IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

MFA.No. 1544 of 2001(C)

OPMV.726/1997 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

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APPELLANT:

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1. K.P.THOMAS, KALLUNGAL HOUSE
   BRAMAPURAM

2. GEORGE, S/O JOSEPH
   VEPPALLYMOOLA HOUSE,
   NEAR PATHIPURAKKAL HIGH SCHOOL
   KAKKANAD P.O

BY ADV. SRI.M.V.BOSE
SRI.CHERIAN VARGHESE

RESPONDENTS:

BABU.K.K
S/O KAVALAN, KEERALUM MALA HOUSE
KUSUMAGIRI P.O

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13-06-2007 THE COURT ON 13/06/2007 DELIVERED THE FOLLOWING:

ORDER IN CMP NO. 9886 OF 2001 IN M.F.A. 1544 OF 2001

DISMISSED

13-6-2007 SD/- K.PADMANABHAN NAIR, JUDGE

//True copy//

K.PADMANABHAN NAIR . J.

M.F.A No.1544 of 2001

Dated this the 13th day of June 2007

JUDGMENT

The respondents in O.P (M.V) No. 726/1997 on the file of the Addl. Motor Accidents Claims Tribunal Ernakulam are the appellants. The appeal is field against an award passed by the Tribunal by which the appellants were directed to pay an amount of Rs. 28,000/- with 12% interest to the respondent/claimant. The respondent/claimant filed an original petition claiming compensation against the appellants. It is averred that at about 7-30 P.M. on 17-11-1996 the respondent was riding a bicycle along the Kakkanadu-Chittethukara road from south to north. When he reached at Pattupurakkal near Kakkanadu the scooter bearing registration No. KL-7/D 5961 came in a rash or negligent manner and hit against the bicycle of the respondent The respondent sustained fracture below the left knee. It was alleged that the 1st appellant is the owner of the scooter and the 2nd appellant is the rider and the accident occurred due to the negligence of the rider of the scooter. The appellants filed written statement contending that there was no negligence on the part of the rider of the scooter . It was contended that the scooter did not hit the bicycle . The respondent/claimant sustained injuries on account of the fall from the bicycle and the entire claim is false. On the side of the

respondent/claimant PW1 was examined A1 to A6 were proved and marked. The Tribunal relying on the evidence of PW1 found that the accident occurred due to the rash or negligent riding of the scooter by the 2nd appellant. It was also held that the respondent was not cross-examined by the appellants and they did not adduce evidence. The Tribunal also held that the respondent/claimant is entitled to get an amount as 28,000/- as compensation. The learned counsel appearing for the appellants has argued that the appellants were prevented from attending the Tribunal and giving evidence on account of the Bandh which was called by the left Democratic Front on the date of which the case was posted for trial. It is also contended that there was no vehicular traffic on that day. They had produced a paper before this court to prove that they were prevented by sufficient cause. It is also argued that though a final report was filed against the 2nd appellant he was acquitted holding that he was not guilty of the offences alleged against him. The learned counsel appearing for the appellants submitted that before the Magistrate the respondent had admitted that accident occurred not due to the negligence of the second appellant . Considering all aspects of the matter it is only just and proper that appellants be given an opportunity to contest the matter on merits by cross-examining the witnesses examined for and on behalf of the respondent and also to adduce the oral and documentary evidence. For that purpose the case is to go back

In the result the appeal is allowed . The award passed by the Tribunal in O.P (M.V) 726/1997 is hereby set aside. The Tribunal is directed to take the O.P(M.V) 726/1997 back to file and dispose of the same afresh in accordance with law after giving both sides an opportunity to adduce oral and documentary evidence if so advised. The parties shall appear before the M.A.C.T. on 20th July 2007.

sd/-

K.PADMANABHAN NAIR,JUDGE

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